STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 24, 2002
v	No. 230001 Livingston Circuit Court
LYMAN REESE BRUNO, Defendant-Appellant.	LC No. 99-011422

Before: Holbrook, Jr., P.J., and Zahra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of embezzlement of over $100 by an agent, MCL 750.174.[1] We affirm.

In October 1996, defendant worked as a salesperson for Universal Electric in Howell. On October 12, 1996, Jason Genereaux went to this store to purchase a Tech 490 plus furnace, which he was going to install in the home of Leslie Pincha. Genereaux testified that defendant was the salesperson he worked with. Genereaux paid $715.50 in cash for the furnace and defendant used the store's computer system to generate an invoice. The invoice bore the initials "L.R.B.," which defendant identified as being his initials. The serial number of the furnace was identified on the invoice as 951019271. Genereaux testified that he installed the furnace and serviced it several times in the next few years.

Then, in April 1999, Genereaux returned to Universal to obtain replacement parts for the furnace. The serial number Genereaux placed on the return tag was 951019271. Thomas Minshall, who handled the return, testified that the store's computer files indicated that a furnace bearing this serial number had been retuned on October 12, 1996. The invoice for the return indicated that it also had been prepared by "L.R.B." This second invoice also identified the sale of a second Tech 490 plus furnace, which bore a serial number ending in 2632.[2] The two invoices established that the cost of the second furnace was $159 less than the first. Jeff Veaton,

[1] The Legislature amended MCL 750.174 effective January 1, 1999. 1998 PA 312. Defendant was tried under the prior version of the statute.

[2] At the preliminary examination, the full serial number was identified as 951982632.

Universal's president, testified that the books for the Howell store were in balance for October 12, 1996.

Livingston County Sheriff's Department Detective Todd Luzod went to Pincha's home and verified that a furnace bearing the serial number 951019271 was still installed there. Veaton testified that the second furnace was not found in Universal's inventory. The trial court specifically found that this second furnace was in Universal's inventory on October 12, 1996, and that it "either was dishonestly disposed of or converted to the defendant's own use or taken or secreted."

Defendant first argues that the prosecution did not prove that a second furnace had been in Universal's inventory at all, let alone that it was taken from the store. We disagree. Evidence was adduced at trial that an invoice could not be printed at any Universal store unless a serial number was typed into the computer. While there was testimony that at some unspecified time an invoice could be generated by typing in a series of "X's," "O's," and dots for a serial number, there is no evidence that an invoice could be generated if a false number not consisting of these three characters was entered. The second invoice was not made up of these random characters; rather, it was identified as ending in 2632. We believe it is reasonable to conclude from this evidence that this second serial number was indeed a real serial number for a furnace in Universal's inventory. *People v Avant*, 235 Mich App 499, 507; 597 NW2d 864 (1999) ("Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime.").

There was also testimony that at least one Tech 490 plus furnace was missing from Universal's inventory. The fact that the testimony is not precise on whether more than one of this type of furnace was missing is not dispositive. If only one Tech 490 plus furnace was missing, it is not unreasonable to conclude on this record that it was the second furnace, nor is it unreasonable to conclude that if more than one was missing, one of them was the second furnace. The fact that more than one might be missing does not necessarily mean that all missing furnaces are attributable to inventory errors or the actions of others. Additionally, the evidence establishes that the first furnace was never actually returned to Universal's inventory. We believe this evidence and the reasonable inferences arising therefrom establish that the second furnace did indeed go missing on October 12, 1996. Further, although defendant never specifically argues that the evidence did not establish that it was he who took the second furnace from the store, we believe that the evidence does support this conclusion.

Second, defendant argues that pursuant to the plurality opinion in *People v Schultz*, 435 Mich 517; 460 NW2d 505 (1990), he is entitled to have his judgment of sentence amended to reflect that he was convicted of a misdemeanor instead of a felony. We disagree. Defendant's argument is predicated on the fact that as amended by the Legislature in 1998 PA 312, the embezzlement statute now indicates that if the property embezzled has a value of less than $1,000, the perpetrator is guilty of a misdemeanor. MCL 750.174(2), (3)(a). Because defendant failed to raise this issue below, we review for plain error that affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain . . . , 3) and the plain error affected substantial rights. . . . The third requirement generally requires a showing of prejudice . . . ." *Id.* Further, if the three elements of the plain error rule are established, "[r]eversal is warranted only when the plain, forfeited error resulted in the

conviction of an actually innocent defendant or when an error '"seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings" independent of the defendant's innocence.'" *Id.*, quoting *United States v Olano*, 507 US 725, 736-737; 113 S Ct 1770; 123 L Ed 2d 508 (1993) (quoting *United States v Atkinson*, 297 US 157, 160; 56 S Ct 391; 80 L Ed 555 [1936]).

Underlying defendant's argument is the unspoken assumption that his judgment of sentence should specifically mention that he was convicted of either a felony or a misdemeanor. However, defendant does not advance any authority in support of this proposition. Defendant cannot simply announce a position and leave it up to this court to "search for authority either to sustain or reject his position." *Goolsby v Detroit*, 419 Mich 651, 655, n 1; 358 NW2d 856 (1984). Further, while MCR 6.427(3) indicates that the judgment of sentence should include "the crime for which defendant was convicted," the court rule does not mandate that the felony/misdemeanor distinction must also be included. Defendant's judgment of sentence does contain all of the information set forth in MCR 6.427, including the fact that he was convicted of embezzlement of over $100 by an agent. Therefore, because defendant fails to show he has a right to have the felony or misdemeanor designation appear on the judgment of sentence, defendant has failed to establish clear error affecting substantial rights.[3] *Carines, supra*.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Brian K. Zahra
/s/ Donald S. Owens

[3] We also conclude that *Schultz* is inapposite. Neither the binding holding of *Schultz*, nor the reasoning of the plurality opinion are applicable to the case at bar.